

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: David Foster	Team: Team # 5	CCRB Case #: 200704116	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/24/2007 1:00 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 9/24/2008	EO SOL 9/24/2008	
Date/Time CV Reported Mon, 03/26/2007 10:26 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/26/2007 10:26 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Jason Sharp	16369	935731	075 PCT
3. POM Bilal Ates	30040	934429	075 PCT
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Patrick Steffens	00000	901055	075 PCT
2. LT Peter Carretta	00000	917387	075 PCT
3. POM Lewis Ortiz	13761	899683	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Bilal Ates	Abuse: Police Officer Bilal Ates stopped § 87(2)(b)	§ 87(2)(b)
B.POM Jason Sharp	Abuse: Police Officer Jason Sharp stopped § 87(2)(b)	§ 87(2)(b)
C. An officer	Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.POM Bilal Ates	Abuse: Police Officer Bilal Ates entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E.POM Jason Sharp	Abuse: Police Officer Jason Sharp entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
F.POM Bilal Ates	Force: Police Officer Bilal Ates pointed his gun at § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
G.POM Jason Sharp	Force: Police Officer Jason Sharp pointed his gun at § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
H.POM Bilal Ates	Discourtesy: Police Officer Bilal Ates spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
I.POM Bilal Ates	Force: Police Officer Bilal Ates used physical force against § 87(2)(b)	§ 87(2)(b)
J.POM Bilal Ates	Abuse: Police Officer Bilal Ates frisked § 87(2)(b)	§ 87(2)(b)
K.POM Bilal Ates	Abuse: Police Officer Bilal Ates searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
L.POM Jason Sharp	Abuse: Police Officer Jason Sharp searched § 87(2)(b) in Brooklyn.	
M. Officers	Abuse: Officers entered and searched § 87(2)(b) in Brooklyn.	

Synopsis

On March 24, 2007, at approximately 1:00 a.m., Police Officers Jason Sharp and Bilal Ates responded to a request for assistance made by Lieutenant Peter Carretta at § 87(2)(b) in Brooklyn. Lt. Carretta informed PO Sharp and PO Ates that, after he attempted to resolve a noise complaint in the apartment building, multiple people had fled. Lt. Carretta instructed PO Sharp and PO Ates to investigate while he issued a summons to an unidentified black male outside. As PO Sharp and PO Ates approached the building, § 87(2)(b) ran out onto the stoop, saw the officers, stopped short, gestured toward a bulge in his waistband, and ran back inside. PO Sharp and PO Ates repeatedly instructed § 87(2)(b) to stop, but he refused to do so (**allegations A and B**). § 87(2)(b) slammed the two front doors of the apartment building shut in PO Ates's face. PO Ates and PO Sharp forcibly entered the building and saw § 87(2)(b) run into § 87(2)(b). PO Ates and PO Sharp knocked on the door. § 87(2)(b) who rents § 87(2)(b) and is a friend of § 87(2)(b) asked the officers if they had a search warrant. An unidentified officer allegedly responded, "We don't need a fucking warrant" (**allegation C**). PO Sharp and PO Ates forcibly opened the door to the apartment (**allegations D and E**). PO Ates and PO Sharp pointed their guns at § 87(2)(b) and § 87(2)(b) as they entered the apartment (**allegations F and G**). PO Ates allegedly said to § 87(2)(b) "Big man, get the fuck down" (**allegation H**). PO Ates allegedly grabbed § 87(2)(b) pushed him to the ground, and frisked him (**allegations I and J**). PO Sharp, PO Ates, and unidentified white or Hispanic male officers allegedly searched § 87(2)(b)'s apartment by lifting and moving a sofa in the living room (**allegations K, L, and M**). PO Ates and PO Sharp explained what had happened to Lt. Carretta. Lt. Carretta informed § 87(2)(b) that the City of New York would pay for damage to her doorframe caused by the officers' entry into her apartment.

§ 87(2)(g)

[REDACTED]

Summary of Complaint

§ 87(2)(b)

On March 26, 2007, § 87(2)(b) filed this complaint with the CCRB by telephone (encl. 4a-b). On April 6, 2007, § 87(2)(b) was interviewed at the CCRB (encl. 6a-e).

§ 87(2)(b) a § 87(2)(b)-old black female, is 5'1" tall and weighs 145 pounds. At the time of the incident, § 87(2)(b) was at her home at § 87(2)(b) in Brooklyn, a two-story building with two apartments on the first and second floors, as well as a basement apartment. § 87(2)(b) lives in § 87(2)(b) § 87(2)(b). The entrance to the basement apartment, which is at the bottom of stairs leading down from street level, is to the right of the entrance to the rest of the building, which is at the top of stairs leading up from street level. The first door to the main part of the building leads to a vestibule, followed by a second door which also locks and opens onto a hallway. § 87(2)(b)'s door is the first door to the right in the hallway. § 87(2)(b) who lives in § 87(2)(b) of § 87(2)(b) was also present in § 87(2)(b)'s apartment, as were two of § 87(2)(b)'s friends. § 87(2)(b) was not

able to provide names or contact information for § 87(2)(b)'s friends. § 87(2)(b)'s boyfriend, § 87(2)(b) was asleep in § 87(2)(b)'s bedroom. § 87(2)(b) and § 87(2)(b)'s friends were playing video games in the living room of the apartment.

The superintendent of § 87(2)(b)'s building, who lives in the basement apartment, regularly holds private parties. On the day of the incident, the superintendent had a baby shower that began at 6:00 p.m. § 87(2)(b) did not attend the event but spoke with the superintendent earlier in the day and thus learned of the shower. At approximately 12:45 a.m., § 87(2)(b) saw light from a flashlight come through one of her windows, and an officer, identified through investigation as Lt. Carretta, said, "Do you know how I can get in here?" § 87(2)(b) referred to Lt. Carretta as "the sergeant" throughout her interview and believed he was a sergeant because he was wearing a uniform with a white shirt. The window through which § 87(2)(b) saw Lt. Carretta is near the door to the basement apartment of § 87(2)(b). § 87(2)(b) told Lt. Carretta to ring the bell or knock on the door. At approximately 1:15 a.m., a number of additional officers, both plainclothes and in uniform, had arrived and were banging on the door to the basement apartment. § 87(2)(b) heard a series of "boom" sounds and gathered from this that people from the basement apartment were running up the stairs, toward the roof of the building. The basement apartment has a fire exit located on the first-floor hallway, which also has stairs leading to the roof. The fire door is not marked. § 87(2)(b) heard the sound of officers forcing their way through the two doors leading to the first-floor hallway. An officer, identified through investigation as PO Bilal Ates, said, "Open up." § 87(2)(b) asked, "For what? You don't have a search warrant." PO Ates said, "I don't need a search warrant," and kicked open the door to § 87(2)(b)'s apartment. § 87(2)(b) saw PO Ates do this through the peephole. Because she was standing directly in front of the door, the door hit her nose when PO Ates forced it open. When he forced the door open, PO Ates caused a piece of the door frame to fall off.

The main entrance to § 87(2)(b)'s apartment, which has one bedroom, opens into her kitchen. Approximately six steps to the left is the entrance to § 87(2)(b)'s bedroom. The living room is to the right, while the bathroom is directly in front of the entrance. Thus, it is possible to see into all of the rooms in the apartment from inside the front entrance. As they entered the apartment, PO Ates and three other officers were pointing their guns at § 87(2)(b). § 87(2)(b) was standing behind § 87(2)(b) in the doorway leading to the bathroom. PO Ates shifted his gun to point at § 87(2)(b) and said, "Big man, get the fuck down." § 87(2)(b) immediately got down to the floor on his stomach. PO Ates searched § 87(2)(b) by running his hands around § 87(2)(b)'s waistband and putting his hands in § 87(2)(b)'s pockets. PO Ates then went into the living room, and three other unidentified white or Hispanic male uniformed officers turned § 87(2)(b) over and conducted a further search. § 87(2)(b) did not see this search, so could not describe it in any further detail. § 87(2)(b) could not describe the three officers beyond providing their race and gender. A bald white male officer, identified through investigation as PO Sharp, said to § 87(2)(b) "Can we see your windows?" PO Sharp also told § 87(2)(b) that the officers had entered because they thought people from downstairs were either entering or exiting through her windows. § 87(2)(b) showed PO Sharp the windows in her bedroom and said, "Look at these windows. They've got screens and bars. All of them." § 87(2)(b) stated in her interview that the only window that does not have bars is a window in the front of the apartment that has an air conditioner. From her bedroom, § 87(2)(b) heard officers telling § 87(2)(b)'s friends, who were still in the living room, to turn around. This led her to believe that these individuals were being frisked or searched.

At some point, PO Lewis Ortiz, whom § 87(2)(b) identified after reading his name from his shield, repeatedly told § 87(2)(b) to calm down. § 87(2)(b) was not able to specify at what point PO Ortiz arrived. In the living room, PO Ates lifted § 87(2)(b)'s sofa, causing a wooden leg on the left side in the back to break. A framed picture that was hanging on the wall also fell during the incident, causing the glass to break. PO Ates asked, "Do you all have ID?" All of the people present provided the officer with identification. PO Ates took the documents out to a patrol car, leading § 87(2)(b) to believe he was checking for warrants. § 87(2)(b) also stated that PO Ates completed paperwork related to the incident. § 87(2)(b)

When he returned, PO Ates said, "You don't have any warrants, but you're on parole." § 87(2)(b) was upset by this public mention of her parole status. No further search of § 87(2)(b)'s apartment was conducted. However, several hours later, Lt. Carretta returned to apologize to § 87(2)(b) for the confusion. Lt. Carretta

explained that the incident began when a tenant in the building who has children called 311 to complain about the noise from the baby shower. When no one in the basement apartment would open the door and he saw people from the party running through an alley, Lt. Carretta called for additional officers. Lt. Carretta apologized for the damage to § 87(2)(b)'s door and told her the city would pay to repair it.

§ 87(2)(b)

On March 26, 2007, § 87(2)(b) assisted § 87(2)(b) in filing this complaint with the CCRB by telephone (encl. 4a-b). On April 25, 2007, § 87(2)(b) was interviewed at the CCRB (encl. 7a-e). § 87(2)(b) a § 87(2)(b)-old black male, is 6'4" tall and weighs 250 pounds. On the day of the incident, § 87(2)(b) was wearing a brown hooded sweatshirt, blue jeans, and black boots. § 87(2)(b)

At the time of the incident, § 87(2)(b) was in § 87(2)(b)'s apartment. § 87(2)(b) and § 87(2)(b) were playing video games in the living room of the apartment at the time of the incident, while § 87(2)(b)'s husband slept in the bedroom. No one else was in the apartment.

§ 87(2)(g)

§ 87(2)(b) stated that § 87(2)(b) looked out of the door briefly when she heard the sound of the building's doors being knocked down. When PO Ates and PO Sharp came to § 87(2)(b)'s door, § 87(2)(b) asked them if they had a search warrant. An unidentified officer responded, "We don't need a fucking warrant." An officer, identified through investigation as PO Ates, kicked the door open and approximately fifteen plainclothes officers entered the apartment. The officers were pointing their guns at § 87(2)(b). PO Ates said, "You, big man, get the fuck down!" § 87(2)(b) put his hands in the air with open palms. PO Ates and other officers grabbed § 87(2)(b) by his neck and the back of his head and pushed him to the floor. As a result of this, § 87(2)(b)'s chest hit the floor, then his head. During this process, the sleeve of § 87(2)(b)'s hooded sweatshirt ripped. Two unidentified officers were holding their guns to the back of § 87(2)(b)'s head. § 87(2)(b) did not see this, but felt the steel against his head.

§ 87(2)(b) saw two to three white officers enter and search the living room. An unidentified white male officer looked inside of flower pots. Another officer, identified through investigation as PO Sharp, moved a sofa in the living room. At some point, Lt. Carretta returned and explained that the officers had seen someone running from the party downstairs. Lt. Carretta also stated that the City of New York would pay for damage to § 87(2)(b)'s door caused when the officers entered her apartment.

Results of Investigation

Civilian Witness Statements

Attempts to Identify and Contact Additional Civilian Witnesses

Although § 87(2)(b) stated that two of § 87(2)(b)'s friends were in the apartment at the time of the incident, she was not able to provide any contact information for them. As § 87(2)(b) denied that any of his friends were in the apartment at the time of the incident, it was not possible to contact these potential witnesses. On June 12, 2007, the CCRB contacted § 87(2)(b). § 87(2)(b) stated that he did not wish to participate in the CCRB's investigation, even by providing a telephone statement.

Police Officer Statements

Lieutenant Peter Carretta (75th Precinct), Witness Officer

Lt. Carretta made several memo book entries related to this incident (encl. 10a-c). At 1:05 a.m., Lt. Carretta noted a noise complaint at § 87(2)(b) in Brooklyn. At 1:06 a.m., Lt. Carretta arrived at the location. At 1:25 a.m., a summons was issued and Lt. Carretta resumed patrol.

On August 31, 2007, Lt. Carretta was interviewed at the CCRB (encl. 11a-c). Lt. Carretta, a § 87(2)(b)-old white male, is 5'10" tall and weighs 200 pounds. Lt. Carretta's tour of duty lasted from 8:00 p.m. on March 24, 2007, until 4:35 a.m. on March 25, 2007. Lt. Carretta was working an Impact overtime assignment in uniform with PO Lewis Ortiz. The officers were using a motor vehicle, but Lt. Carretta could not remember whether it was marked or unmarked.

At the time of the incident, Lt. Carretta was designated as the Special Operations Lieutenant for the 75th Precinct. Part of this role is handling chronic 311 calls. The 75th Precinct has received “numerous” complaints from neighbors regarding noise and a possible illegal social club in the basement of § 87(2)(b). Lt. Carretta could not remember how many complaints were received about § 87(2)(b) in the course of a month, but stated that more than five complaints must be filed for a problem to be considered “chronic.” Lt. Carretta could not remember who filed the noise complaint on this particular night. When he drove past the location, he noticed lights and loud music coming from the location. Lt. Carretta approached the building and went down several stairs that lead to the entrance to the basement apartment. This entrance is separate from the entrance to the apartments on the upper floors of the building. Lt. Carretta knocked on the door, but no one responded. From the stairs, Lt. Carretta saw a female, identified through investigation as § 87(2)(b) looking out of the window of an apartment on the first floor. Lt. Carretta was not able to see anyone else inside the apartment. The window was closed, but Lt. Carretta was able to ask § 87(2)(b) using hand gestures if there was another way into the building.

Lt. Carretta went up the stairs and approached the first-floor entrance to the building in order to speak with § 87(2)(b) because he wanted to talk to a resident of the building about the situation in the basement apartment. The main entrance consists of an outer door that is not locked, leading to a vestibule and an inner door that remains locked. As Lt. Carretta opened the outer door, he saw three unidentified males in the vestibule. As soon as the males saw Lt. Carretta, they slammed the door shut. Lt. Carretta could not see what the males did after this as the door was shut. At this point, believing that some kind of criminal activity was afoot, Lt. Carretta walked away and called for an additional unit. The additional unit arrived one to two minutes later. Lt. Carretta walked around the side of the building, toward Pennsylvania Avenue, and saw at least three males running from the back of § 87(2)(b) and jumping over fences leading into neighboring yards. Lt. Carretta could not see how the unidentified males exited the building, nor could he see them clearly enough to be able to tell if they were the same people who had been in the vestibule a ten to fifteen seconds earlier.

§ 87(2)(b) Lt. Carretta and PO Ortiz walked down the alley toward § 87(2)(b) and saw one of the males who had jumped over a fence exit one of the neighboring yards on § 87(2)(b). Lt. Carretta asked this unidentified male where he was coming from and what he was doing. The male was acting in a nervous manner. The responding unit, including PO Jason Sharp and his partner, identified by Lt. Carretta as PO Bilal Ates after Lt. Carretta reviewed the roll call, approached. Lt. Carretta instructed PO Sharp and PO Ates to return to § 87(2)(b) and informed them that “something was going on” in the lobby of the building. Lt. Carretta ran a warrant check on the individual who was stopped, then issued him a summons for criminal trespassing and released him.

After issuing the summons, Lt. Carretta returned to § 87(2)(b) where he spoke with PO Sharp and PO Ates. The officers informed Lt. Carretta that they had seen a male, later identified as § 87(2)(b) who made a gesture as if he was reaching toward a weapon and ran into the building. PO Sharp and PO Ates followed § 87(2)(b) inside and into the first apartment on the right on the first floor. The officers frisked § 87(2)(b) for safety reasons and asked him why he ran. § 87(2)(b) told the officers that he ran because he was scared. After receiving this information from PO Sharp and PO Ates, Lt. Carretta spoke with a female, identified by Lt. Carretta as § 87(2)(b) after Lt. Carretta viewed a photograph of § 87(2)(b). § 87(2)(b) informed Lt. Carretta that officers had entered the building and broken her door frame. Lt. Carretta examined the door frame and confirmed that it did appear to have been recently damaged, although it also appeared to have older damage. § 87(2)(b) expressed concern that the landlord would make her pay to fix the door. Lt. Carretta completed a “City Involved” accident form and informed § 87(2)(b) of the process she should follow to get her doors repaired with compensation from the City of New York. When the investigator stated that the CCRB requested this form and it was not found, Lt. Carretta stated that he has looked for this form and does not have a copy of it. Lt. Carretta could not say whether any copy of this form is maintained at the precinct.

Lt. Carretta smelled marijuana in § 87(2)(b)'s apartment and § 87(2)(b) led him away from the apartment, saying, “We’ll talk outside.” § 87(2)(b) informed Lt. Carretta that she was on either probation

or parole, and stated that she did not want to have any trouble or “make a big deal.” Lt. Carretta could not remember if he obtained any identification from § 87(2)(b) but did remember that he did not conduct any warrant checks on § 87(2)(b). Lt. Carretta saw a male inside the apartment, but could not say with certainty whether this male was § 87(2)(b) and did not recognize a photograph of § 87(2)(b). Lt. Carretta could not remember if other units responded to the incident.

Lt. Carretta stated that a call was made to IAB regarding this incident later in the night. When he responded, Lt. Carretta encountered a highly intoxicated female neighbor of § 87(2)(b) who was slurring her words. § 87(2)(b) repeated the same story to Lt. Carretta and Lt. Carretta reiterated that § 87(2)(b) could seek reimbursement from the City of New York for the damage to her door. § 87(2)(b) did not complain of any damage to her apartment aside from the damage to her door.

Lt. Carretta instructed PO Sharp and PO Ates to complete a stop and frisk report for § 87(2)(b). Lt. Carretta stated that he did not witness either of the officers actually completing a report, but assumed that they had done so because they “had a supervisor that was covering them.” After reviewing the roll call, Lt. Carretta confirmed that the sergeant assigned to direct them was Sgt. Karimzada. Lt. Carretta did not remember seeing Sgt. Karimzada on the scene. Lt. Carretta could not remember if there were any plainclothes officers on the scene.

Police Officer Jason Sharp (75th Precinct), Subject Officer

PO Sharp made two memo book entries related to this incident (encl. 12a-c). At 1:00 a.m., PO Sharp wrote: “Responded to a 10-85 at § 87(2)(b). Observed Lt. Carretta w/ 1 black male trying to restrain him while numerous people are running out of house. Observed 1 black male with a bulge in his waist. He grabbed his waist, turned and ran into Apt. 1. I ran after him in hot pursuit broke front door jam to get in-searched house and black male-negative results-within reach.” At 1:30 a.m., PO Sharp was “en route to 75th Precinct for ‘City Involved’ paperwork.”

On September 20, 2007, PO Sharp was interviewed at the CCRB (encl. 13a-c). PO Sharp, a § 87(2)(b)-old white male, is 5’6” tall and weighs 205 pounds. PO Sharp worked from 5:30 p.m. on March 23, 2007, until 2:05 a.m. on March 24, 2007. PO Sharp worked in plainclothes with PO Ates. The officers were in unmarked vehicle number 221.

At the time of the incident, PO Sharp and PO Ates were on “routine patrol” when officers called for assistance at § 87(2)(b). PO Sharp stated that there is a known illegal social club in the basement of § 87(2)(b). PO Sharp had no personal experience with this social club, but other officers at the scene informed him of this. When PO Sharp and PO Ates arrived, approximately ten other officers were present. PO Sharp could not remember the names of any officers who were present. PO Sharp saw a “scuffle on the floor” involving Lt. Carretta and an unidentified black male. This was taking place several houses away from § 87(2)(b). By the time they got to Lt. Carretta, the black male had been handcuffed. There were several crowds of people in the area around the intersection of Pennsylvania and Hegeman Avenues. Some were further away, on Pennsylvania Avenue, but there was one crowd of six to seven people one to two car lengths away from § 87(2)(b). These six to seven people were yelling and cursing at the officers, but PO Sharp could not remember what they were saying. PO Sharp did not personally interact with any members of this crowd of people.

Lt. Carretta informed PO Sharp that there were “possible crimes being committed” involving the first floor and basement of § 87(2)(b). Specifically, approximately twenty people were jumping out of windows and otherwise fleeing the building. As PO Sharp and PO Ates approached the building, a black male, identified through by PO Sharp as § 87(2)(b) when the officer viewed a photograph of § 87(2)(b), was running out of the front door. PO Sharp and PO Ates were displaying their shields at this time. PO Sharp made eye contact with § 87(2)(b) and said, “Police! Stop.” § 87(2)(b) stopped, grabbed his waistband, turned around, and ran into the building. There was a visible bulge at § 87(2)(b)’s waist, toward the front. PO Sharp again yelled, “Police! Don’t move. Police! Stop.” § 87(2)(b) ignored the officers’ orders and continued into the building. § 87(2)(b) slammed the outer door shut. The outer door nearly hit PO Ates in the face. The officers forced this door open, breaking the doorjamb. He then slammed shut the inner door, which leads to a hallway. This second door has a

window, making it possible to see into the hallway. § 87(2)(b) ran into an apartment and slammed that door shut. The officers forced open the inner door to the hallway, again causing the doorjamb to break.

When the officers reached the door which § 87(2)(b) had entered, they knocked on the door and said, "Police." The officers could hear voices, but no one opened the door. The officers forcibly opened the door. PO Sharp could not remember whether he or his partner physically opened the door. No other officers were with them at this point. The officers jointly decided to forcibly open the door. The door opens into a kitchen area, and § 87(2)(b) was standing in this area. PO Sharp did not see any other civilians as he entered. PO Sharp and PO Ates had their guns drawn, but were not pointing them. PO Sharp drew his gun because he believed that § 87(2)(b) had a weapon based on what he saw in front of the building. PO Sharp and PO Ates instructed § 87(2)(b) to get down and he immediately got on the floor. PO Ates frisked § 87(2)(b) for weapons by running his hands along the outer layer of § 87(2)(b)'s clothing. PO Sharp did not see PO Ates search § 87(2)(b)'s pockets.

PO Sharp walked around the apartment and opened all of the doors to see if any other civilians were in the apartment and ensure his and his partner's safety. PO Sharp could smell marijuana and stated that there were liquor bottles "everywhere," but he did not search for contraband because he had no reason to do so. § 87(2)(b) whom PO Sharp identified after viewing the photograph on her driver's license, was in the apartment and identified herself as the owner. One or two other people may have been present, but PO Sharp could not remember with certainty. The officers then searched the "grabable area" around § 87(2)(b) and found no weapons. The kitchen is a small room, measuring six to seven feet square. The search of the grabable area extended to opening cabinets, looking behind a garbage can, and looking under a table. The officers conducted this search because § 87(2)(b) "had a second or two, could have thrown a gun down, thrown a knife down."

The officers obtained identification from § 87(2)(b) to prepare a stop and frisk report. § 87(2)(b) provided a New York State security guard identification card. The officers asked § 87(2)(b) why he had run. § 87(2)(b) said that he did not like police officers and was nervous. The owner of the apartment, identified through investigation as § 87(2)(b) spoke with PO Sharp. § 87(2)(b) stated that she was on parole and wished to avoid any further problems, but did want her door to be fixed. § 87(2)(b) made no allegations that the officers had caused any further damage. PO Sharp asked § 87(2)(b) for identification. At first, § 87(2)(b) was hesitant to provide her identification because she did not want her parole officer to find out about what had happened. PO Sharp explained that he needed the identification to prepare the paperwork and she provided it. PO Sharp, PO Ates, § 87(2)(b) and § 87(2)(b) walked out of the apartment. § 87(2)(b) left while PO Sharp continued to talk with § 87(2)(b) about the damage to her door. PO Sharp and PO Ates explained to Lt. Caretta what had happened, and he explained to § 87(2)(b) that the City of New York would pay for the damage to her door.

PO Sharp did not run a warrant check on § 87(2)(b). To PO Sharp's knowledge, no other officers entered § 87(2)(b)'s apartment. No officer said to the occupants of the apartment, "We don't need a fucking warrant." § 87(2)(b) did ask PO Sharp to show her a warrant during her conversation with him, but this was after the officers had entered. PO Sharp explained that, under the circumstances, the officers did not need a warrant. He did not, however, curse in the course of providing this explanation. No officer said to § 87(2)(b) "Big man, get the fuck down." No sofa was lifted from the floor in the living room. PO Sharp could not remember the names of any other officers who were present during the incident. The tracer supervisor was not present for the incident. PO Sharp and PO Ates returned to the 75th Precinct stationhouse, where PO Sharp prepared "City Involved" paperwork and PO Ates prepared the stop and frisk report. PO Sharp did not witness PO Ates completing the stop and frisk report, but it was his understanding that this was what PO Ates was doing.

Police Officer Bilal Ates (75th Precinct), Subject Officer

PO Ates made two memo book entries related to this incident (encl. 14a-b). At 1:00 a.m., PO Ates made the following entry: "responded to a 10-85 at § 87(2)(b). Observed Lt. Caretta w/1 black male trying to restrain him. Numerous people fleeing from scene. Observed 1 black male w/ bulge in waist and he took off running while holding his waist band. Suspect ran into § 87(2)(b) 3 doors broken en route to suspect. -Negative results." At 1:30 a.m., PO Ates was "en route to 75 to start NYC involved paperwork."

On September 20, 2007, PO Ates was interviewed at the CCRB (encl. 15a-b). PO Ates, a § 87(2)(b)-old white male, is six feet tall and weighs 240 pounds. PO Ates worked from 5:30 p.m. on March 23, 2007, until 2:05 a.m. on March 24, 2007. PO Ates worked in plainclothes with PO Sharp in an unmarked vehicle.

§ 87(2)(g) With respect to the information relayed by Lt. Carretta, PO Ates stated that the lieutenant informed them that there were “a bunch of people hanging out” in the vicinity of § 87(2)(b) and that some of them had fled from the officers. Lt. Carretta did not give PO Sharp and PO Ates any further information regarding the possible crimes taking place at § 87(2)(b). Lt. Carretta instructed the officers to go back to the building and “check around the house.”

PO Ates’s description of § 87(2)(b)’s actions was consistent with the statement of PO Sharp. PO Ates, like PO Sharp, displayed his shield, identified himself as an officer, and told § 87(2)(b) to stop multiple times throughout the pursuit. After § 87(2)(b) slammed the two front doors shut in PO Ates’s face, the officer kicked them both open and saw § 87(2)(b) enter § 87(2)(b). At the door, PO Ates could smell the odor of marijuana. PO Ates yelled, “Police!” PO Ates forcibly opened the door to the apartment by kicking it. No other officers were with PO Ates and PO Sharp at this point. When asked about his reason for entering the apartment, PO Ates stated that he and his partner believed that § 87(2)(b) “might have” had a firearm.

§ 87(2)(b) was standing in the kitchen, in front of the main apartment door, and PO Ates instructed him to get on the floor. § 87(2)(b) complied. As he entered the apartment, PO Ates had his gun drawn out of concern for his safety. PO Ates did not point his gun at anyone, and when he saw that § 87(2)(b) did not have anything in his hands, he holstered his weapon. PO Ates frisked § 87(2)(b) by running his hand over § 87(2)(b)’s pockets and waistband area. PO Ates did not put his hands in § 87(2)(b)’s pockets. At this point, there was no longer a bulge in § 87(2)(b)’s waistband. PO Sharp did a “quick walk-through” to ensure the officers’ safety. PO Ates searched the area immediately around § 87(2)(b) for weapons. None were found. The odor of marijuana that PO Ates detected from outside the main door was stronger inside the apartment.

A female, identified by PO Ates as § 87(2)(b), identified herself as the owner or renter of the apartment and expressed concern that her parole officer would find out about the incident. PO Sharp and PO Ates assured her that this would not happen. The officers informed § 87(2)(b) that the City of New York would pay for the damage to her door. The officers did not cause any further damage to the apartment. PO Ates obtained identification from § 87(2)(b) and asked him why he had run. § 87(2)(b) replied, “I don’t like police.” PO Ates prepared a handwritten stop and frisk report for § 87(2)(b) that night and dropped it in the box reserved for these reports at the 75th Precinct stationhouse.

PO Ates could not remember the names of any officers who were present aside from Lt. Carretta. No officer said to the occupants of the apartment, “We don’t need a fucking search warrant.” PO Ates did not say to § 87(2)(b) “Big man, get the fuck down.” PO Ates did not personally conduct any warrant checks during the incident. No other officers entered the apartment and no officers broke the legs of a sofa by lifting it. § 87(2)(b) was not complaining of this type of damage, and seemed focused on getting the officers out of her apartment, apparently due to the obvious signs of drug use in the apartment.

Lieutenant Patrick Steffens (75th Precinct), Witness Officer

On July 13, 2007, Lt. Patrick Steffens was interviewed at the CCRB (encl. 8a-b). Lt. Steffens ended his assignment as the Special Operations lieutenant at 11:45 p.m. on March 23, 2007, which his memo book confirms (encl. 9a-b).

Officer Not Interviewed

Although PO Lewis Ortiz responded to the scene with Lt. Carretta, Lt. Carretta testified that PO Ortiz was with him while he was issuing a summons at the corner of Pennsylvania Avenue and Hegeman Avenue, § 87(2)(b). Although § 87(2)(b) remembered talking to an officer with the last name “Ortiz” during the incident, she spoke with this officer late in the incident and did not

make any allegations against him. § 87(2)(g)

Police Department Documents

City Involved Accident Report

The accident report prepared by Lt. Carretta is not on file at the 75th Precinct (encl. 25c).

Stop and Frisk Log

The CCRB initially received an electronic stop and frisk log generated on April 23, 2007, listing no reports related to this incident (encl. 18a). A second electronic stop and frisk log generated on November 23, 2007, lists one report for § 87(2)(b) prepared by PO Sharp, and two reports for “§ 87(2)(b),” prepared by PO Ortiz (encl. 18b). § 87(2)(b) was suspected of trespassing, while § 87(2)(b) was suspected of criminal possession of a weapon. The log includes no reports prepared by PO Ates and none for § 87(2)(b). On November 27, 2007, the CCRB requested copies of the stop and frisk reports related to this incident. As of the date of the signing of this report, the stop and frisk reports had not been provided.

Sprint Report and Communications CD

At 1:05 a.m., a male special operations lieutenant requested additional units at § 87(2)(b). The “tracer 41” unit reported responding. At 1:07 a.m., the special operations lieutenant requested no further units to the location. At 1:27 a.m., the special operations lieutenant reported issuing a summons.

75th Precinct Command Log and Roll Call

The command log has no entries related to this incident (encl. 19a-c). The roll call confirms the officers’ statements regarding their respective tours (encl. 20a-c).

Search for Warrant Checks

The New York State Police Department conducted a search for warrant checks on § 87(2)(b) and found none (encl. 21a-b).

Civilian CCRB and Criminal History

This is § 87(2)(b)’s first complaint with the CCRB (encl. 4b). On October 26, 2007, a search of the Booking, Arraignment, and Disposition System found no previous arrests of § 87(2)(b).

This is § 87(2)(b)’s first complaint with the CCRB (encl. 4b). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Police Officer CCRB History

PO Sharp and PO Ates both have three years of tenure and no previously substantiated CCRB complaints (encl. 3a-b).

Conclusions and Recommendations

Officer Identification

PO Ates, PO Sharp, and Lt. Carretta all confirmed their respective roles in this incident. § 87(2)(b) also identified Lt. Carretta as an officer in a white shirt whose name began with “C.” § 87(2)(g)

PO Sharp was identified as the officer who allegedly moved the sofa in the living

room based on the physical descriptions provided by § 87(2)(b) and § 87(2)(b). Both complainants described this officer as a white male who was bald, 5'9" to 5'10" tall, and weighed 150-200 pounds. PO Sharp, a white male, is bald, 5'6" tall, and weighs 205 pounds. PO Sharp also acknowledged that he conducted a protective sweep during which he entered all rooms in the apartment.

Although § 87(2)(b) and § 87(2)(b) stated that additional officers entered § 87(2)(b)'s apartment, they were unable to describe these officers in detail. § 87(2)(b) in particular, was unable to describe the officers beyond stating that they were white or Hispanic males and was not able to say what the additional officers did while inside the apartment. PO Ates, PO Sharp, and Lt. Carretta could not remember which other officers responded to the scene, and none of these officers reported responding over the radio. Thus, it was not possible to identify any additional officers who were present for this incident.

Assessment of Evidence

§ 87(2)(g) after Lt. Carretta and PO Ortiz knocked on the door to the basement apartment in § 87(2)(b), people began to flee the building and the officers chased them. No one disputes that PO Ates and PO Sharp responded, forcibly entered the apartment building, and forcibly entered § 87(2)(b)'s apartment. It is also undisputed that PO Ates instructed § 87(2)(b) to get down and frisked him while PO Sharp walked through the rest of the apartment.

§ 87(2)(g) Whereas PO Ates and PO Sharp stated that they saw § 87(2)(b) run out of the building, stop, grab toward a bulge in his waistband, and run back into the building, § 87(2)(b) stated that he was simply inside § 87(2)(b)'s apartment, playing video games. § 87(2)(b) and § 87(2)(b) believed that the officers entered § 87(2)(b)'s apartment because they thought that people from the basement apartment were fleeing into § 87(2)(b)'s apartment. § 87(2)(b) and § 87(2)(b) agreed that PO Ates said to § 87(2)(b) "Big man, get the fuck down," while PO Ates denied cursing or referring to § 87(2)(b) as a "big man." § 87(2)(b) and § 87(2)(b) both stated that the officers were pointing their guns as they entered, but PO Ates and PO Sharp stated that they merely had their guns drawn. PO Ates, PO Sharp, and § 87(2)(b) agreed that § 87(2)(b) got on the floor on his own, but § 87(2)(b) alleged that PO Ates and other unidentified officers pushed him to the ground. § 87(2)(b) alleged that PO Ates frisked § 87(2)(b) and searched his pockets, but PO Ates and PO Sharp stated that § 87(2)(b) was merely frisked. § 87(2)(b) did not allege that the officers frisked or searched him. PO Sharp acknowledged that he searched the apartment for additional people, but denied moving a sofa. § 87(2)(b) and § 87(2)(b) alleged that multiple additional unidentified officers entered and searched, but the officers denied this.

The statements of § 87(2)(b) and § 87(2)(b) were inconsistent on a number of points. Whereas § 87(2)(b) stated that several of § 87(2)(b)'s friends were present, § 87(2)(b) denied this. § 87(2)(b) stated that the officers denied needing a "fucking search warrant" at the door, but § 87(2)(b) did not allege that the officers cursed at this time. § 87(2)(b) stated that approximately five officers entered her apartment, while § 87(2)(b) stated that fifteen officers entered. As noted above, § 87(2)(b) stated that § 87(2)(b) got to the floor on his own, while § 87(2)(b) alleged that officers, including PO Ates, pushed him. § 87(2)(b) stated that an officer fitting PO Ates's description lifted the sofa in her living room, while § 87(2)(b) stated that an officer fitting PO Sharp's description moved the sofa.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

PO Sharp stated that approximately ten other officers were present when he and his partner arrived, while PO Ates stated that more than ten officers were present. § 87(2)(g)

§ 87(2)(g)

Recommended Dispositions

Allegation A: Police Officer Bilal Ates stopped § 87(2)(b)

Allegation B: Police Officer Jason Sharp stopped § 87(2)(b)

In *New York Search and Seizure*, Barry Kamins notes that “the most intrusive level of police conduct, short of an arrest, is the right of a police officer to ‘stop and frisk’ an individual” (encl. 2d). A police officer is justified in stopping and frisking an individual when, “in addition to a reasonable suspicion that justifies a stop of the individual, the officer...entertain[s] an independent and reasonable suspicion that the suspect is armed and dangerous” (encl. 2i). § 87(2)(g)

Allegation C: An officer spoke obscenely and/or rudely to § 87(2)(b) *and* § 87(2)(b)

§ 87(2)(g)

Allegation D: Police Officer Bilal Ates entered § 87(2)(b) § 87(2)(b) *in Brooklyn.*

Allegation E: Police Officer Jason Sharp entered § 87(2)(b) § 87(2)(b) *in Brooklyn.*

In *New York Search and Seizure*, Barry Kamins notes that one exception to the warrant requirement is “hot pursuit,” which both PO Ates and PO Sharp cited in their memo book entries as their reason for following § 87(2)(b) into § 87(2)(b)s apartment. Under the hot pursuit exception, “the police may enter premises without a warrant to search for a suspect who has fled after committing a crime,” but “must have probable cause to believe that the suspect has committed a crime and that he has fled to the specific premises” (encl. 1j). § 87(2)(g)

Kamins notes that other exceptions to the warrant requirement exist. None of these exceptions, however, apply to this case. Under the only other exception to the warrant requirement that could possibly apply in this case, the emergency doctrine, officers may enter a premises “to investigate suspicious signs of impending danger” that lead to a “reasonable belief of an emergency” (encl. 1d and 1j). In *People v. Mitchell*, the Court of Appeals set out three requirements for such an entry:

(1) The police must have reasonable grounds to believe that there is an emergency at hand, and that there is an immediate need for their assistance for the protection of life and property; (2) the search must *not* primarily be motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or property to be searched.” (encl. 1e)

Courts have interpreted these three requirements to mean that police officers may enter a premises for reasons including the following:

To locate or aid the victims or possible victims of a reported crime, ...when there is a report of a violent fight involving a gun, ...or a report of screaming and a serious verbal dispute. In other cases, the exigency is based on a need to investigate suspicious sounds, or to look for persons who are missing or have been kidnapped. (encl. 1f)

In all of these examples, the officers’ entry is justified by specific information indicating that a person inside is in distress or that a person with a gun who has just engaged in a dispute reported to police is inside the premises. PO Sharp and PO Ates had no such specific information in this case, nor did they have consent to enter the apartment, see contraband in plain view, or have reason to believe that evidence of a crime was going to be destroyed if they waited to obtain a warrant.

Reasonable suspicion that an individual is armed, absent additional information, does not justify an officer’s entry into an apartment. In *Police Department v. Walker and Spaccaforno*, Administrative Law Judge Raymond Kramer found that officers who responded to a report of a “fight” in an apartment building’s hallway, saw several men who appeared to be loitering in the hallway and smoking marijuana, and chased them into an apartment without obtaining consent to enter committed misconduct (encl. 1m-r). In that case, as in this one, the officers had reasonable suspicion that the men in question were committing a crime, but no probable cause to arrest them. Judge Kramer noted that the officers’ conduct was “clearly inappropriate and involved officers taking matters into their own hands rather than following the strict dictates of the law or police procedures” (encl. 1r).

In *Police Department v. Dowd and Rose* (OATH Index 1189/90 and 1190/90), Administrative Law Judge Charles Fraser found that “an improper search or seizure is punishable misconduct if the officer acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper” (encl. 2b). Judge Fraser further noted that officers cannot be held accountable “for difficult bodies of law, fact, or both” which often “vex lawyers, judges, professors and legislators” (encl. 2b). Judge Fraser nonetheless found that “an officer is charged to know the law governing searches and seizures, at least to the extent that the law is clear enough to be free from fair dispute” and that “failure to act in accordance with clear law will generally be presumed to involve fault” (encl. 2c).

§ 87(2)(g)

Allegation F: Police Officer Bilal Ates pointed his gun at § 87(2)(b) and § 87(2)(b)
Allegation G: Police Officer Jason Sharp pointed his gun at § 87(2)(b) and § 87(2)(b)
In *Police Department v. Gliner* (OATH Index 955/00), Administrative Law Judge Ray Fleischhacker noted that “the policy of the Department is that an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety” (encl. 1t-u). Judge Fleischhacker further noted that administrative cases regarding this matter “do not appear to make a distinction between the drawing of a firearm and the pointing of it in situations where drawing a gun was found to have been reasonable” (encl. 1u). § 87(2)(g)

Allegation H: Police Officer Bilal Ates spoke obscenely and/or rudely to § 87(2)(b)
On October 7, 2004, in *Police Department v. White*, charges that an officer engaged in misconduct by telling members of a crowd to “get the fuck back” were dismissed because the officer used profanity in order to gain compliance during a chaotic situation in which a man who had fired shots was at large (encl. 1h-j). § 87(2)(g)

Allegation I: Police Officer Bilal Ates used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation J: Police Officer Bilal Ates frisked § 87(2)(b)

§ 87(2)(g) an officer who has “reasonable suspicion to believe a suspect has committed a crime *and* a reasonable suspicion that the suspect is armed and dangerous” may justifiably frisk that suspect (encl. 2j). § 87(2)(g)

Allegation K: Police Officer Bilal Ates searched § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation L: Police Officer Jason Sharp searched § 87(2)(b) § 87(2)(b) in Brooklyn.

According to Kamins, police officers who make “a warrantless entry under the emergency doctrine,” as the officers did in this case, “cannot conduct a full-blown search of the premises” (encl. 1i). Officers may conduct a “protective sweep” for persons who “may pose a threat to the officers,” as the officers in this case did (encl. 1k). However, the sweep must be narrowly limited “to protect the police officer from the perceived danger” (encl. 1k). In certain cases, courts have allowed officers “to search within an individual’s ‘grabbable area’ for *weapons*,” but “the sweep will be invalid if it is totally unrelated to any emergency or exigency and is only motivated by a desire to search for evidence” (encl. 1g-h). Again, the purpose of the search must be to protect the officers’ safety, and not to search for evidence.

§ 87(2)(g)

§ 87(2)(g)

Allegation M: Officers entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

As noted above, none of the additional officers who responded to Lt. Carretta's call for assistance reported responding over the radio. PO Sharp and PO Ates denied that any other officers entered the apartment with them and could not remember which other officers were present on the scene. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: